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Attorneys for Defendants

**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

Cleopatria Martinez,

Plaintiff,

v.

Maricopa County Community College  
District; et al.,

Defendants.

No. CV 15-01759-PHX-NVW

**DEFENDANTS' ANSWER TO  
PLAINTIFF'S VERIFIED  
AMENDED COMPLAINT**

Defendants Maricopa Community College District ("MCCCD") and Rufus Glasper and Debra Glasper (collectively referred to as "Defendants") hereby answer Plaintiff Cleopatria Martinez's ("Plaintiff") Verified Amended Complaint ("Complaint").

**Parties**

1. Responding to the allegations contained within paragraph 1 of the Complaint, upon information and belief Defendants admit that Plaintiff is of Mexican national origin and a resident of Maricopa County, Arizona. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations and, on that basis, deny said allegations.

3. Responding to the allegations contained within paragraph 3 of the Complaint, Defendants admit that Rufus Glasper (“Chancellor Glasper”) is and was the Chancellor of MCCCCD and acted in that role. Except as admitted herein, Defendants deny each and every remaining allegation contained within paragraph 3 of the Complaint.

4. Responding to the allegations contained within paragraph 4 of the Complaint, Defendants admit that Plaintiff has filed an action under 42 U.S.C. § 1983 *et seq.*

5. Responding to the allegations contained within paragraph 5 of the Complaint, Defendants admit that this Court has federal jurisdiction under 28 U.S.C. §§ 1331 and 1343(a).

6. Responding to the allegations contained within paragraph 6 of the Complaint, Defendants admit that venue is proper in this Court.

7. Responding to the allegations contained within paragraph 7 of the Complaint, Defendants admit that MCCCCD has employed Plaintiff since January 7, 1985. Except as admitted herein, Defendants deny each and every remaining allegation contained within paragraph 7 of the Complaint.

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1           9.     Responding to the allegations contained within paragraph 9 of the  
2 Complaint, Defendants admit that Chancellor Glasper forwarded the “Statement of  
3 Charges” attached as Exhibit B to the Complaint to Plaintiff on or about August 9, 2013.  
4 Defendants aver that the Statement of Charges set forth numerous violations by the  
5 Plaintiff including her violation of MCCCDC’s prohibition against a faculty member  
6 having a financial interest in or receiving compensation from the sale of unpublished  
7 instructional materials and Plaintiff’s willful and intentional failure to perform job  
8 duties.

9           10.    Responding to the allegations contained within paragraph 10 of the  
10 Complaint, Defendants admit that Chancellor Glasper concurred with the  
11 recommendation of MCCCDC Interim Vice Chancellor for Human Resources, James  
12 Bowers, that *prima facie* cause existed for the Plaintiff’s dismissal. Defendants further  
13 admit that Plaintiff had been employed with MCCCDC for nearly 30 years. Defendants  
14 deny Plaintiff’s allegation that she had no record of previous discipline and further deny  
15 the remaining allegations in paragraph 10 of the Complaint.

16           11.    Responding to the allegations contained within paragraph 11 of the  
17 Complaint, Defendants admit Dr. Martinez exercised her right to appeal pursuant to  
18 Residential Faculty Policies (“RFP”), Section 3.15.3. Defendants further aver that  
19 Exhibit C to the Complaint speaks for itself and requires no answer. Except as admitted  
20 herein, Defendants deny each and every remaining allegation contained within paragraph  
21 11 of the Complaint.

22           12.    Responding to the allegations contained within paragraph 12 of the  
23 Complaint, Defendants admit that a Hearing Committee conducted an evidentiary  
24 hearing and considered both testimonial and documentary evidence submitted by  
25 Plaintiff and MCCCDC. Except as admitted herein, Defendants deny each and every  
26 remaining allegation contained within paragraph 12 of the Complaint.

27           13.    Responding to the allegations contained within paragraph 13 of the  
28 Complaint, Defendants admit said allegations insofar as paragraph 13 correctly and

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1 completely quotes the Hearing Committee's Findings of Fact attached as Exhibit A to  
2 the Complaint. Defendants deny said allegations insofar as they incorrectly or  
3 incompletely quote the Hearing Committee's Findings of Fact attached as Exhibit A to  
4 the Complaint.

5 14. Responding to the allegations contained within paragraph 14 of the  
6 Complaint, Defendants admit said allegations insofar as paragraph 14 correctly and  
7 completely quotes the Hearing Committee's Conclusions attached as Exhibit A to the  
8 Complaint. Defendants deny said allegations insofar as they incorrectly or incompletely  
9 quote the Hearing Committee's Conclusions attached as Exhibit A to the Complaint.

10 15. Responding to the allegations contained within paragraph 15 of the  
11 Complaint, Defendants admit said allegations insofar as paragraph 15 correctly and  
12 completely quotes the Hearing Committee's Recommendations attached as Exhibit A to  
13 the Complaint. Defendants deny said allegations insofar as they incorrectly or  
14 incompletely quote the Hearing Committee's Recommendations attached as Exhibit A to  
15 the Complaint.

16 16. Responding to the allegations contained within paragraph 16 of the  
17 Complaint, Defendants admit that Chancellor Glasper decided to suspend Plaintiff's  
18 employment without pay from March 1, 2014 through May 15, 2015. Defendants aver  
19 that Chancellor Glasper notified Plaintiff of her suspension by letter dated February 10,  
20 2014, which is attached as Exhibit D to the Complaint. Defendants further aver that as  
21 set forth in Chancellor Glasper's letter to Plaintiff dated February 10, 2014, the basis for  
22 the suspension included "the unanimous finding of an independent hearing committee  
23 that [Plaintiff] willfully violated the district policies set forth in the Statement of  
24 Charges...." Except as admitted herein, Defendants deny each and every remaining  
25 allegation contained within paragraph 16 of the Complaint.

26 17. Responding to the allegations contained within paragraph 17 of the  
27 Complaint, Defendants admit that Chancellor Glasper provided Plaintiff with a  
28 Statement of Charges dated February 10, 2014 (which is attached as Exhibit D to the

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1 Complaint) with respect to her suspension. Defendants aver that in his letter dated  
2 February 10, 2014, which accompanied the February 10, 2014 Statement of Charges,  
3 Chancellor Glasper explained that the “basis for [the suspension] is the unanimous  
4 finding ... that [Plaintiff] willfully violated the District’s policies set forth in the  
5 Statement of Charges ....” Except as admitted herein, Defendants deny each and every  
6 remaining allegation contained within paragraph 17 of the Complaint.

7 18. Responding to the allegations contained within paragraph 18 of the  
8 Complaint, Defendants admit said allegations insofar as paragraph 18 correctly and  
9 completely quotes the Notice of Suspension attached as Exhibit D to the Complaint.  
10 Defendants deny said allegations insofar as they incorrectly or incompletely quote the  
11 Notice of Suspension attached as Exhibit D to the Complaint.

12 19. Responding to the allegations contained within paragraph 19 of the  
13 Complaint, Defendants deny said allegations. Defendants aver that the Hearing  
14 Committee concluded that: (i) Plaintiff “willfully and intentionally failed to follow  
15 instructions that were communicated to her when she failed to issue refunds to students  
16 as directed by President Solley”; (ii) Plaintiff’s testimony before the Hearing Committee  
17 constituted and contained her “admission of willful insubordination”; (iii) Plaintiff  
18 “violated MCCCCD Administrative Regulation 6.7.1 which prohibits the ‘[w]illful and  
19 intentional violation of any ... MCCCCD administrative regulation that affects the  
20 employee’s ability to perform his or her job’”; and (iv) Plaintiff “violated MCCCCD  
21 Administrative Regulation 6.7.3 which prohibits the ‘[w]illful and intentional failure to  
22 perform job duties that have first been communicated to an employee and are within the  
23 employee’s scope of employment.’”

24 20. Responding to the allegations contained within paragraph 20 of the  
25 Complaint, Defendants admit said allegations.

26 21. Responding to the allegations contained within paragraph 21 of the  
27 Complaint, Defendants admit said allegations insofar as paragraph 21 correctly and  
28 completely quotes section 3.11 of the Residential Faculty Policy and its subparts.

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1 Defendants deny said allegations insofar as they incorrectly or incompletely quote  
2 section 3.11 of the Residential Faculty Policy and its subparts.

3 22. Responding to the allegations contained within paragraph 22 of the  
4 Complaint, Defendants deny said allegations.

5 23. Responding to the allegations contained within paragraph 23 of the  
6 Complaint, Defendants admit that section 3.11 of the Residential Faculty Policy is  
7 different from section 3.13 of the Residential Faculty Policy. Except as admitted herein,  
8 Defendants deny each and every remaining allegation contained within paragraph 23 of  
9 the Complaint.

10 24. Responding to the allegations contained within paragraph 24 of the  
11 Complaint, Defendants deny said allegations.

12 25. Responding to the allegations contained within paragraph 25 of the  
13 Complaint, said allegations are a conclusion of law which require no answer. To the  
14 extent that an answer is required, Defendants deny said allegations.

15 26. Responding to the allegations contained within paragraph 26 of the  
16 Complaint, Defendants admit said allegations insofar as paragraph 26 correctly and  
17 completely quotes section 3.13.8 of the Residential Faculty Policy. Defendants deny the  
18 remaining allegations contained within paragraph 26 of the Complaint.

19 27. Responding to the allegations contained within paragraph 27 of the  
20 Complaint, Defendants deny said allegations and aver that the quoted language  
21 contained within paragraph 27 contains an internal ellipses and does not correctly quote  
22 section 3.13.10 of the Residential Faculty Policy.

23 28. Responding to the allegations contained within paragraph 28 of the  
24 Complaint, Defendants deny said allegations.

25 29. Responding to the allegations contained within paragraph 29 of the  
26 Complaint, Defendants deny said allegations.

27 30. Responding to the allegations contained within paragraph 30 of the  
28 Complaint, Defendants deny said allegations.

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1           31. Responding to the allegations contained within paragraph 31 of the  
2 Complaint, Defendants admit said allegations insofar as paragraph 31 correctly and  
3 completely quotes section 3.13 of the Residential Faculty Policy and its subparts.  
4 Defendants deny said allegations insofar as they incorrectly or incompletely quote  
5 section 3.13 of the Residential Faculty Policy and its subparts.

6           32. Responding to the allegations contained within paragraph 32 of the  
7 Complaint, Defendants aver that Chancellor Glasper forwarded the Hearing Committee's  
8 recommendations to the Governing Board on February 10, 2014 and Plaintiff's counsel,  
9 Steve Montoya, was copied. Defendants further aver that the Hearing Committee's  
10 recommendations were forwarded to the Governing Board by Plaintiff's counsel on  
11 March 12, 2014. Except as admitted herein, Defendants deny each and every remaining  
12 allegation contained within paragraph 32 of the Complaint.

13           33. Responding to the allegations contained within paragraph 33 of the  
14 Complaint, in imposing the suspension Chancellor Glasper sought the advice of  
15 MCCC'D's General Counsel as required by section 3.11.3 of the Residential Faculty  
16 Policy. Except as admitted herein, Defendants deny each and every remaining allegation  
17 contained within paragraph 33 of the Complaint.

18           34. Responding to the allegations contained within paragraph 34 of the  
19 Complaint, Defendants deny said allegations.

20           35. Responding to the allegations contained within paragraph 35 of the  
21 Complaint, Defendants deny said allegations.

22           36. Responding to the allegations contained within paragraph 36 of the  
23 Complaint, Defendants admit that the Hearing Committee concluded that MCCC'D did  
24 not carry its burden of proof relating to Plaintiff's violations of federal copyright laws or  
25 MCCC'D's cash handling policy. Defendants, however, aver that the Hearing Committee  
26 specifically concluded that: (i) Plaintiff willfully and intentionally failed to follow  
27 instructions that were communicated to her when she failed to issue refunds to students  
28 as directed by President Solley; (ii) Plaintiff's testimony before the Hearing Committee



1 constituted and contained her “admission of willful insubordination”; (iii) Plaintiff  
2 “violated MCCCCD Administrative Regulation 6.7.1 which prohibits the ‘[w]illful and  
3 intentional violation of any ... MCCCCD administrative regulation that affects the  
4 employee’s ability to perform his or her job’”; and (iv) Plaintiff “violated MCCCCD  
5 Administrative Regulation 6.7.3 which prohibits the ‘[w]illful and intentional failure to  
6 perform job duties that have first been communicated to an employee and are within the  
7 employee’s scope of employment.’”

8 37. Responding to the allegations contained within paragraph 37 of the  
9 Complaint, Defendants deny said allegations.

10 38. Responding to the allegations contained within paragraph 38 of the  
11 Complaint, Defendants deny said allegations.

12 39. Responding to the allegations contained within paragraph 39 of the  
13 Complaint, Defendants admit that the Statement of Charges dated February 10, 2014  
14 references MCCCCD Administrative Regulations 1.12.2 and 1.12.3 with respect to a  
15 student’s complaint that Plaintiff had refused to provide a receipt for materials which  
16 Plaintiff required the student to purchase. Defendants aver that the aforesaid Regulations  
17 were referenced in the Statement of Charges dated February 10, 2014 with respect to  
18 Plaintiff’s intentional violation of a direct instruction to issue refunds to students to  
19 whom she sold course materials in violation of the cash handling policy. Defendants aver  
20 that these issues were fully heard and considered by the Hearing Committee which  
21 concluded that: (i) Plaintiff “willfully and intentionally failed to follow instructions that  
22 were communicated to her when she failed to issue refunds to students as directed by  
23 President Solley”; (ii) Plaintiff’s testimony before the Hearing Committee constituted  
24 and contained her “admission of willful insubordination”; (iii) Plaintiff “violated  
25 MCCCCD Administrative Regulation 6.7.1 which prohibits the ‘[w]illful and intentional  
26 violation of any ... MCCCCD administrative regulation that affects the employee’s ability  
27 to perform his or her job’”; and (iv) Plaintiff “violated MCCCCD Administrative  
28 Regulation 6.7.3 which prohibits the ‘[w]illful and intentional failure to perform job



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1 duties that have first been communicated to an employee and are within the employee's  
2 scope of employment.'''

3 40. Responding to the allegations contained within paragraph 40 of the  
4 Complaint, Defendants admit that the Statement of Charges dated August 9, 2013 do not  
5 specifically reference MCCCCD Administrative Regulations 1.12.2 and 1.12.3.  
6 Defendants aver that the Statement of Charges dated February 10, 2014 pertaining to the  
7 suspension of Plaintiff reference MCCCCD Administrative Regulations 1.12.2 and 1.12.3  
8 with respect to a student's complaint that Plaintiff had refused to provide a receipt for  
9 materials which Plaintiff required the student to purchase. Defendants further aver that  
10 the aforesaid Regulations were referenced in the Statement of Charges dated February  
11 10, 2014 with respect to Plaintiff's intentional violation of a direct instruction to issue  
12 refunds to students to whom she sold course materials in violation of the cash handling  
13 policy. Defendants aver that these issues were fully heard and considered by the Hearing  
14 Committee which concluded that: (i) Plaintiff "willfully and intentionally failed to  
15 follow instructions that were communicated to her when she failed to issue refunds to  
16 students as directed by President Solley"; (ii) Plaintiff's testimony before the Hearing  
17 Committee constituted and contained her "admission of willful insubordination"; (iii)  
18 Plaintiff "violated MCCCCD Administrative Regulation 6.7.1 which prohibits the  
19 '[w]illful and intentional violation of any ... MCCCCD administrative regulation that  
20 affects the employee's ability to perform his or her job"; and (iv) Plaintiff "violated  
21 MCCCCD Administrative Regulation 6.7.3 which prohibits the '[w]illful and intentional  
22 failure to perform job duties that have first been communicated to an employee and are  
23 within the employee's scope of employment.'''

24 41. Responding to the allegations contained within paragraph 41 of the  
25 Complaint, Defendants deny said allegations.

26 42. Responding to the allegations contained within paragraph 42 of the  
27 Complaint, Defendants deny said allegations.  
28

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1           43. Responding to the allegations contained within paragraph 43 of the  
2 Complaint, Defendants deny said allegations.

3           44. Responding to the allegations contained within paragraph 44 of the  
4 Complaint, Defendants deny said allegations.

5           45. Responding to the allegations contained within paragraph 45 of the  
6 Complaint, Defendants deny that the Residential Faculty Policy required Chancellor  
7 Glasper to submit the issue of Plaintiff's suspension to the Governing Board. Defendants  
8 aver that Residential Faculty Policy sections 3.13.8-3.13.10 speak for themselves and  
9 require no answer. Defendants deny each and every remaining allegation contained  
10 within paragraph 45 of the Complaint.

11           46. Responding to the allegations contained within paragraph 46 of the  
12 Complaint, Defendants admit that Chancellor Glasper was not required to submit the  
13 issue of Plaintiff's suspension to the Governing Board. Defendants aver that Residential  
14 Faculty Policy sections 3.13.8-3.13.10 speak for themselves and require no answer.  
15 Defendants admit that the Statement of Charges dated August 9, 2013 involved  
16 dismissal. Defendants aver that the Hearing Committee's Findings of Fact, Conclusions  
17 of law, and Recommendations were provided to and received by the Governing Board.  
18 Except as admitted herein, Defendants deny each and every remaining allegation  
19 contained within paragraph 46 of the Complaint.

20           47. Responding to the allegations contained within paragraph 47 of the  
21 Complaint, Defendants deny said allegations.

22           48. Responding to the allegations contained within paragraph 48 of the  
23 Complaint, Defendants deny said allegations.

24           49. Responding to the allegations contained within paragraph 49 of the  
25 Complaint, Defendants deny said allegations.

26           50. Responding to the allegations contained within paragraph 50 of the  
27 Complaint, Defendants deny said allegations.  
28

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1           51. Responding to the allegations contained within paragraph 51 of the  
2 Complaint, Defendants admit said allegations.

3           52. Responding to the allegations contained within paragraph 52 of the  
4 Complaint, Defendants deny said allegations.

5           53. Responding to the allegations contained within paragraph 53 of the  
6 Complaint, Defendants deny said allegations.

7           54. Responding to the allegations contained within paragraph 54 of the  
8 Complaint, Defendants admit said allegations. Defendants aver that the Fall 2015 class  
9 schedule was published prior to the end of Plaintiff's suspension.

10          55. Responding to the allegations contained within paragraph 55 of the  
11 Complaint, Defendants deny said allegations.

12          56. Responding to the allegations contained within paragraph 56 of the  
13 Complaint, Defendants deny that it is normal procedure to ask professors who have been  
14 suspended for egregious conduct, such as the Plaintiff, which classes they want to teach  
15 in advance of publishing a class schedule. Defendants deny each and every remaining  
16 allegation contained within paragraph 56 of the Complaint.

17          57. Responding to the allegations contained within paragraph 57 of the  
18 Complaint, Defendants deny said allegations.

19          58. Responding to the allegations contained within paragraph 58 of the  
20 Complaint, Defendants deny said allegations.

21          59. Responding to the allegations contained within paragraph 59 of the  
22 Complaint, Defendants deny that the normal procedures for professors who have been  
23 suspended for egregious misconduct, such as the Plaintiff, is to allow them to "bump"  
24 adjuncts. Defendants further deny each and every remaining allegation contained within  
25 paragraph 59 of the Complaint.

26          60. Responding to the allegations contained within paragraph 60 of the  
27 Complaint, Defendants deny said allegations.  
28

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1           61. Responding to the allegations contained within paragraph 61 of the  
2 Complaint, Defendants deny said allegations.

3           62. Responding to the allegations contained within paragraph 62 of the  
4 Complaint, Defendants deny that a professor who has been suspended for egregious  
5 misconduct, such as the Plaintiff, would have access to her office and computer to  
6 prepare for classes. Defendants further deny each and every remaining allegation  
7 contained within paragraph 62 of the Complaint.

8           63. Responding to the allegations contained within paragraph 63 of the  
9 Complaint, Defendants deny said allegations.

10          64. Responding to the allegations contained within paragraph 64 of the  
11 Complaint, Defendants deny said allegations.

12          65. Responding to the allegations contained within paragraph 65 of the  
13 Complaint, Defendants deny said allegations.

14          66. Responding to the allegations contained within paragraph 66 of the  
15 Complaint, Defendants deny said allegations.

16          67. Responding to the allegations contained within paragraph 67 of the  
17 Complaint, Defendants deny said allegations.

18          68. Responding to the allegations contained within paragraph 68 of the  
19 Complaint, Defendants deny said allegations.

20          69. Responding to the allegations contained within paragraph 69 of the  
21 Complaint, Defendants deny said allegations.

22          70. Responding to the allegations contained within paragraph 70 of the  
23 Complaint, said allegations are a conclusion of law which require no answer. To the  
24 extent that an answer is required, Defendants deny said allegations.

25          71. Responding to the allegations contained within paragraph 71 of the  
26 Complaint, said allegations are a conclusion of law which require no answer. To the  
27 extent that an answer is required, Defendants deny said allegations.  
28

1           72. Responding to the allegations contained within paragraph 72 of the  
2 Complaint, Defendants deny said allegations.

3           73. Responding to the allegations contained within paragraph 73 of the  
4 Complaint, said allegations are a conclusion of law which require no answer. To the  
5 extent that an answer is required, Defendants deny said allegations.

6           74. Responding to the allegations contained within paragraph 74 of the  
7 Complaint, said allegations are a conclusion of law which require no answer. To the  
8 extent that an answer is required, Defendants deny said allegations.

9           75. Responding to the allegations contained within paragraph 75 of the  
10 Complaint, said allegations are a conclusion of law which require no answer. To the  
11 extent that an answer is required, Defendants deny said allegations.

12           76. Responding to the allegations contained within paragraph 76 of the  
13 Complaint, Defendants aver that the Hearing Committee concluded that: (i) Plaintiff  
14 “willfully and intentionally failed to follow instructions that were communicated to her  
15 when she failed to issue refunds to students as directed by President Solley”; (ii)  
16 Plaintiff’s testimony before the Hearing Committee constituted and contained her  
17 “admission of willful insubordination”; (iii) Plaintiff “violated MCCCC Administrative  
18 Regulation 6.7.1 which prohibits the ‘[w]illful and intentional violation of any ...  
19 MCCCC administrative regulation that affects the employee’s ability to perform his or  
20 her job”; and (iv) Plaintiff “violated MCCCC Administrative Regulation 6.7.3 which  
21 prohibits the ‘[w]illful and intentional failure to perform job duties that have first been  
22 communicated to an employee and are within the employee’s scope of employment.’”  
23 Defendants admit that Plaintiff’s suspension was entirely justified. Except as admitted  
24 herein, Defendants deny each and every remaining allegation contained within paragraph  
25 76 of the Complaint.

26           77. Responding to the allegations contained within paragraph 77 of the  
27 Complaint, Defendants aver that the Hearing Committee concluded that: (i) Plaintiff  
28 “willfully and intentionally failed to follow instructions that were communicated to her

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1 when she failed to issue refunds to students as directed by President Solley”; (ii)  
2 Plaintiff’s testimony before the Hearing Committee constituted and contained her  
3 “admission of willful insubordination”; (iii) Plaintiff “violated MCCCDC Administrative  
4 Regulation 6.7.1 which prohibits the ‘[w]illful and intentional violation of any ...  
5 MCCCDC administrative regulation that affects the employee’s ability to perform his or  
6 her job”; and (iv) Plaintiff “violated MCCCDC Administrative Regulation 6.7.3 which  
7 prohibits the ‘[w]illful and intentional failure to perform job duties that have first been  
8 communicated to an employee and are within the employee’s scope of employment.’”  
9 Defendants admit that counsel for the Hearing Committee made the statements set forth  
10 in paragraph 77 of the Complaint insofar as paragraph 77 correctly and completely  
11 quotes Exhibit I to the Complaint. Defendants deny said allegations insofar as they  
12 incorrectly or incompletely quote Exhibit I to the Complaint. Defendants further aver  
13 that as set forth in Exhibit I to the Complaint counsel for the Hearing Committee advised  
14 that “[t]he Hearing Committee has found that there is evidence of Dr. Martinez’  
15 insubordination.”

16 78. Responding to the allegations contained within paragraph 78 of the  
17 Complaint, Defendants deny said allegations.

18 79. Responding to the allegations contained within paragraph 79 of the  
19 Complaint, Defendants admit that Interim President Chris Haines gave Plaintiff the  
20 option of signing the agreement attached as Exhibit J to the Complaint, which Plaintiff  
21 refused. Except as admitted herein, Defendants deny each and every remaining  
22 allegation contained within paragraph 79 of the Complaint.

23 80. Responding to the allegations contained within paragraph 80 of the  
24 Complaint, Defendants aver that the proposed Agreement speaks for itself and requires  
25 no answer. To the extent that an answer is required, Defendants deny said allegations.

26 81. Responding to the allegations contained within paragraph 81 of the  
27 Complaint, Defendants aver that Exhibit J [*sic*] and the letter of Interim President, Chris  
28 Haines, speak for themselves and require no answer. To the extent that an answer is

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1 required, Defendants deny said allegations. Defendants further aver that Plaintiff has  
2 continued her insubordination, which she was found guilty of by the Hearing Committee,  
3 by refusing to reimburse students for the monies which she improperly collected.  
4 Specifically, the Hearing Committee concluded that: (i) Plaintiff “willfully and  
5 intentionally failed to follow instructions that were communicated to her when she failed  
6 to issue refunds to students as directed by President Solley”; (ii) Plaintiff’s testimony  
7 before the Hearing Committee constituted and contained her “admission of willful  
8 insubordination”; (iii) Plaintiff “violated MCCCCD Administrative Regulation 6.7.1  
9 which prohibits the ‘[w]illful and intentional violation of any ... MCCCCD administrative  
10 regulation that affects the employee’s ability to perform his or her job’”; and (iv)  
11 Plaintiff “violated MCCCCD Administrative Regulation 6.7.3 which prohibits the  
12 ‘[w]illful and intentional failure to perform job duties that have first been communicated  
13 to an employee and are within the employee’s scope of employment.’” Defendants deny  
14 each and every remaining allegation contained within paragraph 81 of the Complaint.

15 82. Responding to the allegations contained within paragraph 82 of the  
16 Complaint, Defendants admit that President Haines’ letter contains the statements set  
17 forth in paragraph 82 of the Complaint insofar as paragraph 82 correctly and completely  
18 quotes Exhibit K to the Complaint. Defendants deny said allegations insofar as  
19 paragraph 82 of the Complaint incorrectly or incompletely quotes Exhibit K to the  
20 Complaint. Defendants further aver that Plaintiff has continued her insubordination,  
21 which she was found guilty of by the Hearing Committee, by refusing to reimburse  
22 students for the monies which she improperly collected. Specifically, the Hearing  
23 Committee concluded that: (i) Plaintiff “willfully and intentionally failed to follow  
24 instructions that were communicated to her when she failed to issue refunds to students  
25 as directed by President Solley”; (ii) Plaintiff’s testimony before the Hearing Committee  
26 constituted and contained her “admission of willful insubordination”; (iii) Plaintiff  
27 “violated MCCCCD Administrative Regulation 6.7.1 which prohibits the ‘[w]illful and  
28 intentional violation of any ... MCCCCD administrative regulation that affects the



1 employee's ability to perform his or her job"; and (iv) Plaintiff "violated MCCCCD  
2 Administrative Regulation 6.7.3 which prohibits the '[w]illful and intentional failure to  
3 perform job duties that have first been communicated to an employee and are within the  
4 employee's scope of employment.' Except as admitted herein, Defendants deny each and  
5 every remaining allegation contained within paragraph 82 of the Complaint.

6 83. Responding to the allegations contained within paragraph 83 of the  
7 Complaint, Defendants deny said allegations.

8 84. Responding to the allegations contained within paragraph 84 of the  
9 Complaint, Defendants deny said allegations.

10 85. Responding to the allegations contained within paragraph 85 of the  
11 Complaint, Defendants deny said allegations.

12 86. Responding to the allegations contained within paragraph 86 of the  
13 Complaint, Defendants deny said allegations.

14 87. Responding to the allegations contained within paragraph 87 of the  
15 Complaint, Defendants admits said allegations.

16 88. Responding to the allegations contained within paragraph 88 of the  
17 Complaint, Interim President Chris Haines' written response to Plaintiff speaks for itself  
18 and requires no answer.

19 89. Responding to the allegations contained within paragraph 89 of the  
20 Complaint, Defendants aver that Plaintiff's email to Interim President Chris Haines  
21 dated October 15, 2015 speaks for itself and requires no answer.

22 90. Responding to the allegations contained within paragraph 90 of the  
23 Complaint, Defendants aver that the Interim President Chris Haines' written response to  
24 Plaintiff dated October 27, 2015 speaks for itself and requires no answer.

25 91. Responding to the allegations contained within paragraph 91 of the  
26 Complaint, Defendants deny said allegations.

**Jury Demand**

92. Responding to the allegations contained within paragraph 92 of the Complaint, Defendants admit that Plaintiff has demanded a jury trial.

**COUNT I**

(Chancellor Glasper – 42 U.S.C. § 1983 – Liberty Interest)

93. Defendants incorporate by reference herein the answers, defenses, responses, denials and averments to all allegations contained within paragraphs 1 through 92 above as though fully set forth herein.

94. Responding to the allegations contained within paragraph 89 of the Complaint, Defendants deny said allegations.

95. Responding to the allegations contained within paragraph 90 of the Complaint, Defendants deny said allegations.

96. Responding to the allegations contained within paragraph 91 of the Complaint, Defendants deny said allegations.

**COUNT II**

(Chancellor Glasper – 42 U.S.C. § 1983 – Property Interest)

97. Defendants incorporate by reference herein the answers, defenses, responses, denials and averments to all allegations contained within paragraphs 1 through 96 above as though fully set forth herein.

98. Responding to the allegations contained within paragraph 93 of the Complaint, Defendants deny said allegations.

99. Responding to the allegations contained within paragraph 94 of the Complaint, Defendants deny said allegations.

100. Responding to the allegations contained within paragraph 95 of the Complaint, Defendants deny said allegations.

**COUNT III**

(District– 42 U.S.C. § 1983 – Liberty Interest)

101. Defendants incorporate by reference herein the answers, defenses, responses, denials and averments to all allegations contained within paragraphs 1 through 100 above as though fully set forth herein.

102. Responding to the allegations contained within paragraph 97 of the Complaint, Defendants deny said allegations.

103. Responding to the allegations contained within paragraph 98 of the Complaint, Defendants deny said allegations.

104. Responding to the allegations contained within paragraph 99 of the Complaint, Defendants deny said allegations.

105. Responding to the allegations contained within paragraph 100 of the Complaint, Defendants deny said allegations.

**COUNT IV**

(District– 42 U.S.C. § 1983 – Property Interest)

106. Defendants incorporate by reference herein the answers, defenses, responses, denials and averments to all allegations contained within paragraphs 1 through 105 above as though fully set forth herein.

107. Responding to the allegations contained within paragraph 102 of the Complaint, Defendants deny said allegations.

108. Responding to the allegations contained within paragraph 103 of the Complaint, Defendants deny said allegations.

109. Responding to the allegations contained within paragraph 104 of the Complaint, Defendants deny said allegations.

**COUNT V**  
(District– Declaratory Relief)

110. Defendants incorporate by reference herein the answers, defenses, responses, denials and averments to all allegations contained within paragraphs 1 through 109 above as though fully set forth herein.

111. Responding to the allegations contained within paragraph 111 of the Complaint, Defendants deny said allegations. Defendants aver that Plaintiff is still subject to the December 9, 2010 directive because, *inter alia*, Plaintiff has copied and used a large volume of copyrighted material without permission and, according to expert copyright counsel, has exposed MCCCCD to an unreasonable risk of a copyright infringement lawsuit. Defendants further aver that Plaintiff remains subject to the directive because she has intentionally engaged in actions to circumvent and violate the directive, and such actions by the Plaintiff have caused the President of Phoenix College to lose confidence that Plaintiff will respect applicable copyright laws.

112. Responding to the allegations contained within paragraph 112 of the Complaint, Defendants deny said allegations.

113. Responding to the allegations contained within paragraph 113 of the Complaint, Defendants admit said allegations.

114. Responding to the allegations contained within paragraph 114 of the Complaint, Defendants admit that the Findings of Fact, Conclusions of law, and Recommendations of the Hearing Committee are set forth in Exhibit A to Complaint. Except as admitted herein, Defendants deny each and every remaining allegation contained within paragraph 114 of the Complaint.

115. Responding to the allegations contained within paragraph 115 of the Complaint, Defendants admit that RFP 3.13.7 provides that “the Hearing Committee shall render binding written findings of fact and conclusions of law and forward these along with its recommendation regarding dismissal to the Chancellor.” Except as

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admitted herein, Defendants deny each and every remaining allegation contained within paragraph 115 of the Complaint.

116. Responding to the allegations contained within paragraph 116 of the Complaint, Defendants deny said allegations.

117. Responding to the allegations contained within paragraph 117 of the Complaint, Defendants admit said allegations. Defendants aver that Plaintiff is still subject to the December 9, 2010 directive because, *inter alia*, Plaintiff has copied and used a large volume of copyrighted material without permission and, according to expert copyright counsel, has exposed MCCCCD to an unreasonable risk of a copyright infringement lawsuit. Defendants further aver that Plaintiff remains subject to the directive because she has intentionally engaged in actions to circumvent and violate the directive, and such actions by the Plaintiff have caused the President of Phoenix College to lose confidence that Plaintiff will respect applicable copyright laws.

118. All allegations not specifically admitted herein are denied.

### **PRAYER FOR RELIEF**

Defendants deny that Plaintiff is entitled to any of the damages or other relief sought in her prayer for relief.

**WHEREFORE**, Defendants request that each and every count of Plaintiff's Complaint be denied in its entirety, that Plaintiff take nothing, and that Defendants be awarded their reasonable attorneys' fees and costs pursuant to any statutes and rules which would allow Defendants to recover its attorneys' fees, costs, or other relief.

### **AFFIRMATIVE DEFENSES**

1. Plaintiff's claims are barred, in whole or in part, by her failure to state a claim upon which relief may be granted.

2. Plaintiff's claims are barred, in whole or in part, by the doctrines of absolute and/or qualified immunity.

3. Plaintiff's claims are barred, in whole or in part, based on the collateral estoppel doctrine.

1           4.     Plaintiff's claims are barred, in whole or in part, based on the *res judicata*  
2 doctrine.

3           5.     Plaintiff's claims are barred, in whole or in part, based on Defendants'  
4 good faith reliance upon the advice of counsel, Lewis and Roca, in implementing certain  
5 restrictions on Plaintiff's ability to copy and distribute materials to her students.

6           6.     Plaintiff's claims are barred, in whole or in part, by the applicable statute  
7 of limitations.

8           7.     Plaintiff's claims are barred, in whole or in part, by her failure to mitigate  
9 damages.

10          8.     Plaintiff's claims are barred, in whole or in part, by Plaintiff's failure to  
11 exhaust her administrative remedies.

12          9.     Plaintiff's claims are barred, in whole or in part, by the after acquired  
13 evidence doctrine.

14          10.    Defendants reserve the right to amend and/or add affirmative defenses as  
15 discovery proceeds.

16               **WHEREFORE**, Defendants pray as follows:

17           1.     That Plaintiff take nothing by this action;

18           2.     That judgment be entered in favor of Defendants;

19           3.     For costs of suit and for reasonable attorneys' fees incurred by Defendants;

20 and

21           4.     For such other and further relief as the Court deems just and proper.

22               RESPECTFULLY SUBMITTED this 23rd day of November 2015.

23                               FISHER & PHILLIPS LLP

24                               By s/ Pavneet Singh Uppal

25                               Pavneet Singh Uppal

26                               Shayna H. Balch

27                               Alanna R. Brook

28                               201 E. Washington Street, Suite 1450

Phoenix, Arizona 85004-2330

Attorneys for Defendants

**CERTIFICATE OF SERVICE**

I hereby certify that on the 23rd day of November 2015 I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrant(s):

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